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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
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Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-161371-05
Date:
March 26, 2007

Re:

Legend:

Decedent =

Child 1 =

Child 2 =

Spouse =

Date 1 =

Date 2 =

Date 4 =

Trust 1 =

Trust 2 =

Bank =

Dear _____ :

This is in response to correspondence requesting an extension of time to file a qualified doctor's certification and other evidence that Decedent was mentally incompetent at all times on and after October 22, 1986, until his death.

The facts submitted and representations made are as follows. Decedent executed his will on Date1, prior to October 22, 1986, and died on Date 2, after October 21, 1986. Decedent was survived by Child 1 and Child 2. Under the terms of Decedent's will, the residuary estate was to be divided into two equal shares. One share was to be held in trust (Trust 1) for the benefit of Child 1, during Child 1's life, and the other share was to be held in trust (Trust 2) for the benefit of Child 2 during Child 2's life. On the death of the respective child, the trust established for that child is to terminate and the corpus distributed to the child's living issue by right of representation.

Bank, Child 1 and Child 2's spouse, Spouse, were appointed as Decedent's co-personal representatives. Decedent's Form 706, United States Estate (and Generation-skipping) Tax return was filed timely on Date 4. Bank and Child 1 are the co-trustees of Trust 1 and Bank and Spouse are the co-trustees of Trust 2.

You have requested an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file the physician's certification required under §26.2601-1(b)(3)(iii) of the Generation-Skipping Transfer Tax Regulations.

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer.

Under §1433(b)(2)(C) of the Tax Reform Act of 1986 and 26.2601-1(b)(3)(i) of the Generation-Skipping Transfer Tax Regulations, if an individual was under a mental disability to change the disposition of the individual's property continuously from October 22, 1986, until the date of death, the provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual.

Section 26.2601-1(b)(3)(ii) defines the term "mental disability" as mental incompetence to execute an instrument governing the disposition of the decedent's property, whether or not there was an adjudication of incompetence and whether or not there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the decedent or care of the decedent's property.

Section 26.2601-1(b)(3)(iii)(A) provides that if a decedent has not been adjudged mentally incompetent by a court, the executor must file, with Form 706 either -- (1) a certification from a qualified physician stating that the decedent was mentally incompetent at all times on and after October 22, 1986, and did not regain competence to modify or revoke the terms of the trust or will prior to his or her death, or (2) sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is

available from a physician. Section 26.2601-1(b)(3)(iii)(B) provides that the items listed in § 26.2601-1(b)(3)(iii)(A) will be considered relevant, but not determinative, in establishing decedent's state of competency.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I. Section 301.9100-1(b) provides that the term election includes an application for relief in respect of tax.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3. Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts submitted and representations made, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Consequently, an extension of time of 60 days from the date of this letter is granted to file the required physician's certification. The certifications should be attached to a supplemental Form 706 and filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. Copies are enclosed for this purpose.

Except as ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we express no opinion as to whether the Decedent was under a mental disability within the meaning of § 26.2601-1(b)(3)(ii) on and after October 22, 1986. Resolution of this factual matter would be under the audit jurisdiction of the Area Director.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy of this letter

Copy for 6110 purposes

cc: